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ABSTRACT

A longitudinal sociological study was conducted on the impact of the implementation of the Bilingual Education Act and the Aspira consent decree in New York City. The study sought to develop a theoretical framework for analyzing the participation of the Puerto Rican community in the implementation of the bilingual education policies. The question of whether federal laws and the courts can protect the educational interests of language minorities was investigated. Bilingual education provided in connection with the Aspira consent decree was directed to Puerto Rican students who were unable to participate effectively in classes taught only in English. The political development and educational problems confronting Puerto Ricans before and after federal endorsement of bilingual education were analyzed. It is suggested that it has been difficult for new groups to use the traditional political process to promote and protect their interests. The data reviewed suggest that the federal policies concerning bilingual education have provided some limited resources to promote the educational and economic interests of the Puerto Rican community in the school system. Limitations concerning the Aspira consent decree are discussed. (SW)

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CAN FEDERAL LAWS PROTECT THE EDUCATIONAL INTERESTS OF LANGUAGE MINORITIES? Implementation of the Bilingual Education Act and the Aspira Consent Decree in New York City

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This paper is based on a longitudinal sociological study of the implementation of federal policies around bilingual education in New York City. (Steinberg, 1978) The purpose of the study was two-fold: 1) to develop a theoretical framework for the sociological analysis of the integration of new groups based on changes in decision-making and participation which reflect increased federal initiatives in local school problems and 2) to apply this framework to an analysis of the participation of the Puerto Rican community in the implementation of the bilingual education policies.

A major question underlying the study was: "Can federal laws and the court protect the interests of language minorities who have little influence at the local level?" Or, to put it another way, "Can minorities use the court to achieve what they cannot obtain through traditional political channels?"

To answer the question we have focused on the effects of a legal decision, the Aspira consent decree, a decision whereby the New York City Board of Education agreed to provide bilingual education programs for Puerto Rican students who were unable to participate effectively in classes taught only in English.

Most observers of the events related to bilingual education in New York City regard the Aspira lawsuit as a consequence of the federal Bilingual Education Act since that legislation not only legitimated the concept of instruction in two languages, but provided a rationale for the claim that children with limited English speaking ability have a right to an instructional program which maintains their home language and culture.

This presentation will be limited to two effects. One is related to the manifest, or intended, function of the consent decree: the promotion of Puerto

Rican educational interests through the improvement of programs for students in this group. The other refers to the latent, or unintended, function of the decision--the promotion of Puerto Rican economic interests.

The theoretical framework developed for the analysis suggested that in order to analyze the above effects it would be necessary to compare the political development and educational problems confronting Puerto Ricans before and after federal endorsement of bilingual education. This information helps to explain not only why the Puerto Ricans resorted to the court to resolve these problems but some of the limitiations of litigation as a means to promote an educational innovation. Although litigation has become a fairly common strategy to reform local school districts, we know very little about the use of law as a tool for social change. (Dror, 1974)

Interviews with many of the educators who participated in the Aspira lawsuit suggests that their initial expectations were unrealistic. These expectations appear to have been based on two assumptions: 1) that there was research evidence to prove the superiority of bilingual education programs over other methods of instruction for children with limited English speaking ability and 2) the court is a non-political institution. Therefore, they were ill-prepared for the possibility that the decision would involve negotiation and compromise--or, the processes characteristic of the traditional political arena which they had hoped to avoid.

Besides shedding some light on the nature of court-ordered bilingual programs, the events reported here suggest that judges may not be the most suitable arbiters of issues (such as bilingual education) where the research evidence is controversial and there is almost no available technology for implementing the program.

Before turning to these events, we will briefly summarize the theoretical framework and the research methods.

The Conceptual Framework

The conceptual framework was derived from Warren's (1963) thesis on the "great change" in the American community, literature on the political machine and theory and research on community power. (Steinberg, 1977) Application of network concepts to a comparison of the patterns of participation associated with the "old" political machine and those associated with the "new" bureaucratic machines provides a means to identify the requirements for the integration of new groups in the present urban context.

For this analysis, integration is defined in terms of horizontal and vertical linkage. Horizontal linkage refers to the development of cohesive communities at the neighborhood level, including voluntary associations to promote group interests. Vertical linkage refers to relationships between local community members and host society representatives.

According to a number of social scientists (Katznelson, 1976; Cornwell, 1960; Rogler, 1974), the political machine played a crucial role in the integration of earlier immigrant groups. The political machine is an example of a system which performed two functions: the organization of political participation and the distribution of public goods. It was an exchange system which generated horizontal integration in a period when a variety of institutions--the church, political parties, ethnic associations--promoted interaction at the neighborhood level. (Clark, 1975)

The political boss promoted and protected the ethnic community though vertical linkage to a city-level decision center which controlled the resources distributed to the neighborhood. The machine accomplished this through its ability to create and provide jobs and other forms of patronage in exchange for votes. (Clark, 1975)

The literature on collective decisions, participation and social networks in contemporary society suggests that changes in the urban decision-

making structure in many metropolitan areas, as well as small communities, have created conditions which make locality-based interpersonal networks ineffective mechanisms for influencing the policies related to the delivery of local services. Instead, political effectiveness for many issues is dependent on the linkage of professional or specialized networks with extra-local groups--or aspatial rather than horizontal networks. (Greer, 1972; Litt, 1970; Craven and Wellman, 1973) Furthermore, in contrast to the earlier period where political effectiveness for ethnic minorities could rely on strong ties or group solidarity, there is evidence to suggest that access to decisions may require that some members of the group develop "weak ties" at both the grass roots and extra-local levels. (Granovetter, 1973)

Warren (1963) argued that the transfer of decision-making from local to state and national levels had strengthened vertical linkage (between local and extra-local agencies) and fragmented horizontal linkage (or the integration of community based institutions and groups). Processes associated with modernization (social differentiation, industrialization, migration and so forth) tend to promote centralized and specialized decision centers. While some problems require national and/or regional solutions, others still require local solutions. However, many localities lack the resources to enable local residents to develop effective problem-solving or coping mechanisms. (O'Brien, 1975; Warren, 1973)

Some of the changes which eroded the influence of horizontal grass roots groups began with the enactment of New Deal legislation and the institution of urban government reforms. The changes are related to at least five dimensions: 1) the base of power, 2) leadership recruitment, 3) the sources of rewards or incentives to induce participation, 4) criteria for allocating government jobs, and 5) decision centers.

The differences in these dimensions in traditional and contemporary communities stem from the increasing dependence of the local area on state and federal resources, the growth of large-scale service bureaucracies, government reforms, the creation of powerful occupational associations, and the erosion of community-based voluntary associations. Whereas power was centralized informally by the political machine in the earlier period, in the present period it has been fragmented or dispersed by these trends. Decision-making has become specialized and the leadership which dominates decisions in a particular issue area is developed through the occupational or professional group rather than the geographically-based community. (Iannaccone and Wiles, 1971; Gittell, 1967; Rogers, 1968; David and Peterson, 1973; Merton, 1957; Litt, 1970)

These assumptions suggest that:

1) It is unlikely that the political development of a new group will begin at the neighborhood level.

2) The upward mobility of the group is dependent on access to resources which weaken the occupational group's control over decisions in a particular issue area or service delivery system.

METHODS

For this analysis, access refers to evidence of Puerto Rican influence in decision-making: in this case the educational system. Access will be indicated by two factors:

1) A decision that increases the number of jobs for Puerto Rican teachers

2) A means to weaken the bureaucracy's control over implementation of the decision (Gittell, 1967)

A comparative longitudinal design was employed, including data from 1967 through 1977. A variety of field and historical methods were used to identify:

1) Pre-existing power arrangements

2) Key decisions related to bilingual education policy in New York City

3) The network of activists involved in these decisions and their strategy to promote bilingual education

4) Evidence indicating access to jobs in the school system and the extent of compliance with the consent decree

Data sources included:

1) Interviews with participants and observers of key events; representatives of groups involved in federal hearings, nationally known bilingual education scholars, administrators in the New York City school system, the New York State Education Department and USOE, New York State legislators and legislative staff assistants, bilingual education teachers, and lawyers involved in the Aspira case. Almost 100 people were interviewed between 1973 and 1976.

2) Observation of national and New York City bilingual education conferences.

3) Analysis of Federal laws, regulations and legislative hearings.

4) Reports on achievement of Puerto Rican students in the New York City schools.

5) U.S. Census Bureau reports.

6) Transcripts of hearings in the Aspira case.

7) Ethnic surveys of New York City school personnel

8) Newspaper accounts

Identification of the Aspatial Network: Four approaches were used to identify network members and their relationships: 1) decisional--the visible participants in key decisions; 2) "snowball" technique--the visible participants were asked to identify others who participated in the events and how they were related to each other; 3) content analysis of documents to determine key participants in past events, and 4) observation of the behavior of network members at professional conferences and meetings.

FINDINGS

Pre-existing Power Arrangements. All of the data reviewed for this study suggested that when the Bilingual Education Act was passed (1968), Puerto Ricans in New York City had few resources to create community level power bases in most school districts. In addition, studies had documented 1) the domination of educational policies by professional educators--administrators and teacher groups, and 2) the superior strength of established groups (teachers, religious groups and political parties) at the community school district level. (See Steinberg, 1978, Chapter III, for a review of this literature.)

The Educational Problems of Puerto Rican Students and Teachers

The educational problems confronting Puerto Ricans in the New York City school system involved two issues: the achievement of Puerto Rican students enrolled in the system and the hiring of Puerto Rican teachers and administrators. Each will be discussed separately in this section.

"The most distressing incidence of academic failure...occurs among a group of children who are handicapped by a language barrier in the classroom--those 160,000 children whose native language is not English and whose difficulty comprehending English significantly impedes successful school performance." (New York State Commission, 1972)

Based on 1970 data, 84 percent of these children with English language difficulty were enrolled in the New York City public school system and a majority were Puerto Rican.(State Education Department, 1972)

Puerto Ricans comprised almost a fourth (259,879) of the New York City public school enrollment in 1970. One third of the group (94,000) had difficulty speaking and understanding English. In 1970 English as a second language instruction was provided for one-fourth of these students (25,000). An additional 6,000 were enrolled in bilingual programs.

Data on achievement indicated that Puerto Rican students had the lowest reading scores, the highest drop out rates and the weakest academic preparation of all pupils in New York State. Based on the recommendation s of a study conducted in the 1950's, most non-English speaking Puerto Ricans, as other "new arrivals," were placed in "integrated" classes with mainland born children. A Board of Education policy specified that these students were to receive at least one half hour of daily instruction in the English language, but the policy was never fully implemented, as the above figures indicate.

Pressure to develop more services and more effective teaching methods for Puerto Rican students and to hire more Puerto Rican professionals emerged in the late 1960's, reflecting federal support of bilingual education and the mobilization of the Puerto Rican community around educational issues. Despite State legislation in 1970 which enabled local districts to implement bilingual programs and a 1972 Regents endorsement of bilingual methods, in 1973 only half (72,000) of the 143,000 students requiring a special language program received ESL or bilingual instruction. Of this group, approximately 14,000 were enrolled in bilingual programs. Central Board administrators had not developed a policy or issued guidelines related to bilingual and other language programs, viewing such issues as the province of community school boards.

Puerto Rican Teachers and Administrators

In 1969 there were only fourteen Puerto Rican supervisors, 464 teachers and no Puerto Rican directors or assistant directors employed in the school system. The largest number of Puerto Ricans were employed in positions with low prestige and low salaries (see Table 1).

TABLE 1

ETHNIC DISTRIBUTION OF NEW YORK CITY BOARD OF EDUCATION PERSONNEL AS OF MARCH, 1969.

		WHITES		BLACKS		PUERTO RICANS		SPANISH SPEAKING	
DIRECTORS & ASS'T DIRECTORS	TOTAL	NO.	%	NO.	%	NO.	%	NO.	%
Directors (Licensed & Acting)	38	36	94.7	2	5.3	--	--	--	--
Ass't Dirs. & Ass't Adm. Dirs. (Licensed & Acting)	121	106	87.6	15	12.4	--	--	--	--
PEDAGOGICAL PERSONNEL AND SUPPORTIVE STAFF									
Principals (Appointed & Acting)	969	923	95.3	37	3.8	4	0.4	--	--
Ass't Principals (Apptd. & Acting)	2,039	1,781	87.3	239	11.7	10	0.5	2	0.1
Teachers in Charge	40	32	80.0	8	20.0	--	--	--	--
Dept. Chairmen (Licensed & Acting)	1,192	1,128	94.6	57	4.8	4	0.3	1	**
Teachers (Regular & Substitutes)	59,108	52,827	89.4	5,395	9.1	464	0.8	181	0.3
Guidance Counselors (Reg. & Acting)	1,529	1,335	87.3	179	11.7	10	0.7	--	--
Bureau of Child Guidance (Regular, Acting, or Subs.)	605	491	81.2	104	17.2	3	0.5	2	0.3
Paraprofessionals	15,794	6,232	39.5	6,832	43.3	2,483	15.7	112	0.7
OTHERS									
Adm. Employees (Civil Service)	5,672	4,450	78.5	1,000	17.6	138	2.4	59	1.0
School Lunch Employees	9,226	5,496	59.6	3,109	33.7	584	6.3	21	0.2
TOTAL:	96,333	74,837	77.7	16,977	17.6	3,700	3.8	378	0.4

SOURCE: Office of Personnel, N.Y.C. Board of Education; table extracted from Analysis of Puerto Rican and Black Employment in New York City Public Schools Richard Greenspan, 1970.

Most studies which refer to the disproportionately low number of black and Puerto Rican professionals in the New York city schools, compared to their distribution in the total City population, blame the Board of Examiners for this state of affairs (Rogers, 1968:285-294). The group, established by New York State law in 1898, was one of the earlier urban reformer's devices to institute a merit system and eliminate patronage in the City's schools. It is a division of the Board of Education which controls recruitment into and promotion within the system through its responsibility for examinations for teachers and supervisors and setting up eligibility lists for these positions.

The validity of the testing instruments developed by the Board of Examiners has been challenged in several studies. Critics have pointed out a number of formal and informal procedures, in addition to the tests, which favor the promotion of insiders and exclusion of innovators. Rogers refers to these procedures, which protect the interests of "whatever ethnic groups are in power," as "professional politics" (Rogers, 1968:295).

Since the 1950's, Jews have held power in the professional associations and the Board of Examiners but by 1967 they had achieved only "middle and upper middle levels in the hierarchy" (Rogers, 1968:295). Before the Jews, the Catholics were in control and in 1967 they still dominated the key administrative positions. As the Jews "move into greater power and prominence" Rogers predicted, "they will come into periodic conflict with emerging Negro and Puerto Rican groups who would like retribution for past discrimination and do not want to wait any longer for their turn" (Rogers, 1968:296).

Two decisions which increased the number of blacks and Puerto Ricans hired in the school system were the Decentralization Law and the Mansfield Decision. Under the former, local districts could hire teachers who had passed the National Teacher Examination rather than the Boards' licensing examinations only if 45 percent of the student body enrolled in a particular school was found to be reading below grade level. The Mansfield decision, a response to a 1970 lawsuit instituted by the NAACP on behalf of black and Puerto Rican candidates for supervisory positions, enabled community school districts to appoint principals and other supervisors without regard to the Board of Examiners' eligibility lists.

A comparison of white and minority (Black and Hispanic) staff members hired by the community school districts and the Central Board between 1969 and 1972, provides data on the extent to which decentralization promoted the hiring of minorities (Bresnick, 1977). The author found the most "dramatic" gains for blacks and Hispanics at the decentralized level, with the greatest gains (on a percentage basis) for Hispanics, particularly in the category of school principal. Hispanics gained twenty-three principals, an increase of 287.5 percent. At the district level, Hispanics gained 470 teachers, a percentage increase of 78.2 percent. At the central level, the comparable figure was 46.5 percent. There were 803 Hispanic teachers employed at the two levels in 1969. By 1972 the total was 1,367.

The results indicate that the community school boards have responded to ethnic group pressure whereas the central Board has continued to resist minority "inroads," probably due to the "persistence of the examination systems" at this level (Bresnick, 1977:146).

The Aspatial Network. The most visible actors in the events to promote bilingual education in New York City were Puerto Rican teachers and administrators who initially held overlapping memberships in the Puerto Rican Educators Association and Aspira. These educators formed the core of the aspatial network.

The network evolved from an informal clique of five Puerto Rican college students who met and worked together in a Spanish language program during the early 1960's. While attending college they also met Hernan LaFontaine and a few other Puerto Rican men who were among the first second generation Puerto Ricans to become professional educators. In 1965 LaFontaine brought these educators together to form the Puerto Rican Educators Association. When the women were recruited to the organization, the initial objective was to change the Board of Examiners' licensing procedures.

The bilingual education concept was introduced to the group through LaFontaine (in 1967) who had been asked by a superintendent to start a bilingual school in the Bronx. LaFontaine reported that his information about bilingual education came from the Dade County and Texas bilingual programs then in operation (LaFontaine, 1976). At first Puerto Rican Education Association members rejected bilingual education. According to one informant: "We thought it was a put-down. We said all the 'dumb' things most people say now if they are ignorant about bilingual education" (Perez, 1976).

LaFontaine reported that he went ahead with the idea. That led the others to think it might be a good idea and eventually they all became committed to bilingual education.

When Title VII funds became available to the City, the first proposals that were funded were written by network members. In addition to running these programs, they embarked on a series of negotiations with City and State officials which resulted in the establishment of an office of bilingual education at both levels of the system. However, the programs administered by these offices were limited to those funded by the State and Title VII. The network was also linked to a Puerto Rican State Senator who introduced, unsuccessfully, several bills in the State legislature that would mandate bilingual programs in the City system. Opposition came primarily from the United Federation of Teachers.

All of these activities--administering Title VII programs, attending bilingual education workshops related to Title VII programs, and promoting bilingual education locally--created numerous occasions for the network members to interact as a group, reinforcing what was described as a "tight knit" circle from the beginning.

When it became apparent that these traditional channels were not likely to result in additional funds for bilingual education, the group decided to support the Aspira lawsuit. This decision brought them into a city-level interorganizational network consisting of Aspira, The Puerto Rican Forum, the Puerto Rican Legal Defense and Education Fund. These three groups eventually developed a united front in support of bilingual education which included a variety of Puerto Rican organizations.

The inability of the activists to utilize these traditional channels to obtain additional support for bilingual education accounts for the group's endorsement of a coercive strategy: a lawsuit which would force the board of education to institute bilingual programs on a systemwide basis.

The Aspira lawsuit. Aspira is the organization exclusively concerned with Puerto Rican educational issues. When founded, in 1961, its primary purpose was to provide guidance and help to develop leadership among Puerto Rican youth. It is a national organization with affiliates in five states, and chapters in city high schools.

According to the recollection of one of the lawyers involved, the idea for the lawsuit began around 1969 when Antonia Pantoja, the founder of Aspira, consulted some civil rights lawyers about building a legal case that might change educational policy for Puerto Ricans. The lawsuit was filed in the spring of 1972 by the Puerto Rican Legal Defense and Education Fund and the Community Action Legal Services. (Perales, 1975) Four groups were involved in the Aspira case: the Puerto Rican Educators Association, the Puerto Rican Educators Task Force, educators from Community School District #1 and the American Jewish Committee.

The Aspira suit stated that:

> The individual plaintiffs are New York City public school children and their parents in families recently arrived from Puerto Rico for whom Spanish is their predominant or only language.

The suit was pleaded as a class action on behalf of 182,000 children said to be similarly situationed. The complaint alleged that:

> . . . the plaintiff children speak little or no English, that the schools they compulsorily attend offer instruction mainly or only in English; that the results for these children are inadequate learning, lowered educational achievement and test scores, a poor rate of promotion and graduation, and a train of attendant consequences for college entrance, employment, civic participation and the quality of life generally (Aspira v. Board of Education of the City of New York).

Although the Aspira suit was filed prior to the filing of the Lau suit, it was held in abeyance pending the decision in Lau since the latter was at the Supreme Court level and Aspira involved a lower court (Southern District).

Following the Lau decision, attorney for plaintiffs in Aspira moved for summary judgment. In April, 1974, Judge Marvin Frankel directed the defendants, with plaintiff participation, to prepare a survey to determine the number of "affected children" and the availability of programs to serve their needs. Both sides were directed to submit "detailed statements of the educational programs they deem necessary to comply with the HEW regulations enforced in Lau" (72 Civ. 4002, 30 April 1974).

Under the terms of a consent decree, signed on August 29, 1974, the Board of Education agreed to provide three of the four elements requested in the plan requested by Aspira:

1. The introduction of reading in the Spanish language
2. Subject matter instruction in the cild's home language
3. English as a second language, taught through a "sequentially structured program

The fourth request, Puerto Rican culture, was rejected on the basis of insufficient evidence to justify the inclusion of culture as a separate element. This issue was resolved in a compromise--a provision in the decree that materials in the program "shall positively reflect, where appropriate, the culture of the children in the program. Additionally, any personnel training program shall continue to be sensitive to the cultural diversities of the children" (Aspira v. Board of Education of the City of New York).

There were other stipulations in the decree relating to the adequacy of the professional staff responsible for implementing the program, that plaintiffs believed would provide an effective substitute for the cultural element. These included that a "professional in the Program shall (a) be fluent in the Spanish language, and be able to fully comprehend and express himself in written Spanish." However, to fulfill this requirement the Board of Education was permitted to

1) develop and implement programs to retrain personnel, and 2) develop and implement an "intensive and on-going affirmative action program designed to recruit forthwith bilingual personnel in New York City and elsewhere (Consent Decree, p. 6).

Implementation of the Consent Decree. Prior to the institution of the bilingual program on a system-wide basis by September 1975, the Board of Education has agreed to accomplish three tasks:

1. The designation of pilot schools to serve as a model for the system-wide implementation of the bilingual program mandated by the decree
2. The development of a language assessment instrument to identify students eligible for the program, and
3. The recruitment of bilingual teachers to implement the program for the designated students.

A monitoring team composed of volunteers reported that the schools selected to serve as models were not likely to fulfill this function because they had been operating bilingual programs with special funds from federal and state programs, whereas the consent decree programs were to be set up without additional funds. Recommendations for improving bilingual programs, made by the monitoring team, were not acted on.

The language assessment instrument developed by the Board of Education was administered to 300,000 students in the fall of 1974, but its validity was challenged by Aspira. The consent decree stipulated that the students eligible for the bilingual program were those designated as "not effectively participating in the educational process in English and who would assertedly do better if instruction is in Spanish." Definition of effective participation was not specified.

The revised test, the Language Assessment Battery (LAB), consisted of two sections, one in English, the other in Spanish. The Board and Aspira could not agree on the criteria for determining eligibility for the bilingual program. This dispute brought them back to the Judge's chambers where the criteria were established. The Judge ordered that the Spanish version of the test was to be given to the students who scored below the 20th percentile on the English version. Eligibility for the bilingual program was based on scoring higher on the Spanish than the English version of the test.

To ensure an adequate number of qualified bilingual teachers for the program, the Board was ordered to undertake an affirmative action program to recruit and train teachers.

By April 1975, the Board of Education estimated that approximately 3,500 teachers would be required to implement the program by September 1975. The Director of the Division of Personnel expressed optimism about meeting the goal, stating that the "system's intensive efforts to expand its bilingual teaching staff has resulted in a record response of more than 3,500 applications." (Learning in New York, 1975)

Other Board of Education employees were quoted to the effect that the system already had 1,500 licensed bilingual teachers and others who could qualify with "crash courses in Spanish."

Unanticipated Events. Two events which portended that the Board of Education might encounter serious obstacles in implementing the terms of the consent decree on a system-wide basis were the City's financial crisis and a teacher's strike. The financial crisis forced the Board of Education to eliminate 1,600 teaching positions and shut down several schools which resulted in an increase in class size. The increase plus other issues that had created an impasse in the United Federation of Teachers' contract

negotiations with the central Board, provoked a teacher's strike three days after the schools opened in September 1975.

Non-Compliance. In December 1975, Aspira filed a contempt suit based on numerous allegations of the Board's non-compliance with the provisions of the decree. The continued involvement of the court was one of the conditions of the agreement. The court was to mediate disputes which could not be resolved by the two parties and the Board was required to submit monthly compliance reports to the court.

Plaintiffs charged that the Board had failed to administer the test to thousands of Spanish surnamed students, was not providing the program to thousands of entitled students, had failed to hire the necessary personnel and was using "unqualified personnel" in the program. Not surprisingly, the most frequently cited excuses by Board of Education administrators to explain the failure to deliver the required program, were the budget cuts and the teacher's strike. However, since the variations in levels of compliance were extreme, as indicated in Table 2, they were not acceptable to the Aspira lawyers.

In October 1976, the Board was ruled in contempt and ordered to pay plaintiff's costs and attorneys' fees for the lawsuit and the contempt proceedings which came to $130,000. The Puerto Rican Legal Defense and Education Fund settled for $150,000 to avoid an appeal by the Board of Education. The Judge's 33-page decision left no doubt about his views toward the defendants who

> . . . violated their obligations under the decree by failures of diligence, effective control and steadfast purpose to effectuate prescribed goals...
>
> . . . failed steadily and repeatedly to exercise their power and authority so that those they controlled would proceed promptly. (Opinion, p. 9)

TABLE 2

NUMBER AND PERCENTAGE OF ENTITLED STUDENTS RECEIVING ALL ELEMENTS OF THE CONSENT DECREE PROGRAM DECEMBER 1975, FEBRUARY, APRIL/MAY 1976

District	Number of Students Eligible	Percentage of Entitled Students Receiving all elements of Program December	February	April/May
1	1,293	32%	78%	99%
2	952	41	55	86
3	1,950	30	90	92
4	3,095	28	67	90
5	654	35	37	79
6	4,930	77	85	87
7	4,580	28	69	93
8	2,483	44	81	95
9	4,776	73	81	98
10	2,253	36	60	93
11	313	47	14	96
12	4,181	68	80	98
13	1,249	44	87	90
14	2,188	56	83	99
15	2,224	75	96	96
16	338	60	98	95.6
17	889	67	99	99
18	272	67	96	100
19	2,221	30	83	95
20	1,242	46	93	96
21	842	35	37	88
22	121	31	93	100
23	1,237	65	70	70
24	1,933	77	84	91
25	370	15	32	81
26	63	100	100	100
27	873	19	94	100
28	639	49	63	77
29	242	23	31	98
30	N/A	0	--	N/A
31	291	8	71	88
32	2,950	59	94	98

SOURCE: Findings of Fact, August, 1976.

These charges were supported by the fact that less than half of the eligible pupils were receiving all or some of the program when the contempt action was filed. Six weeks later, 38.6% were receiving all elements and 37% of the entitled students were receiving some elements of the program. By May 1976, 75.7% were receiving all elements.* (Table 2)

It was established that there was a sufficient number of qualified teachers available in New York City but in many schools "unqualified people were used in the program." Without bilingual teachers, or a sufficient number in schools with large Puerto Rican enrollments, the Spanish version of the eligibility test could not be given. Central board officials were charged with responsibility for another problem related to the tests--the late delivery of testing materials.

Other problems cited in the Judge's opinion related to the Board's failure to provide personnel to assist in monitoring the program, and the Chancellor's "passive" performance until the court took action. The Board is described as tolerating "slipshod procedures. . . long periods of nonperformance, inadequate performance or outright defiance, from key constituents, the community school boards." (Opinion, p. 17)

"The need for coordination was, or should have been, patent," the Judge wrote, but "there was no effective coordination."

The Contempt Hearings. An investigation of the extent of non-compliance and the effectiveness of the programs developed was beyond the resources available for this study. I was able to obtain data from hearing transcripts and interviews on two major issues: the number of students eligible for the program and the number of bilingual teachers hired by the Board of Education to implement the program. Both issues are relevant to the number of jobs created by the decision.

*As of May 21, 1976, there were 57,313 eligible students of which 8,070 had opted out (14.1%). Findings of Fact.

Eligibility. In some districts large numbers of students had not been tested in the spring of 1975 and the hiring of bilingual teachers was postponed pending the results of the language test. This created a dilemma in districts where schools had large numbers of Spanish speaking or Spanish surnamed students but no or insufficient bilingual teachers to administer the Spanish segment of the test. If the tests were not given before the end of June 1975, the administrators would not know how many students were eligible, thus how many bilingual teachers would have to be hired in September 1975.

There were a number of other problems in the determination of the number of children eligible for the program brought out in the evidentiary hearing testimony of the administrator responsible for the development of the eligibility test, Dr. Anthony Polemini.

As indicated earlier, the Board had little more than a month to develop the first language test which was later rejected by Aspira.

"My position at the time was kind of absurd," Dr. Polemini testified. "To be able to come up with a tool that quickly. . .so what we tried to do was to come up with some modified compromise--and we did just that. We came up with one sub-test. . ." (Transcript, pp. 1267-1269)

When the court declared the first test invalid, Dr. Polemini was directed to develop another test which he described as "an historic document." Experts from the Center for Applied Linguistics and other consultants were brought in. It took six months and a cost of about $300,000 for the revised test. The Bureau of Research and Evaluation received many requests from the community school districts for assistance in administering the test. However, the Bureau could not respond, said Dr. Polemini, because "we did not have that kind of personnel."

From kindergarten through the second grade, the test was administered on an individual basis which took 45 minutes per child. After that grade,

an hour was required, but the larger segment of the test, requiring 50 minutes, was a group test.

Administration of the test provoked the hostility of the classroom teachers, because children had to be taken out of the classroom. Many students at the junior high and high school levels, said Dr. Polemini, were angry about the test. "The vast majority of complaints," according to Dr. Polemini, "were from Spanish surnamed. . .students who were English dominant."

Scoring of the tests given in May had to be done by hand because there was no time to print a machine scored answer sheet. When asked by the court to explain how this came about, Dr. Polemini mentioned that normally it takes 1-½ to 2 years to develop the kind of battery they developed. "Within a six-month period it was just impossible to do the kinds of things you should do."

Besides the technical problems of test construction, the Board is required by law to obtain bids for outside contracts. "It took three weeks to go through the bidding process" for the tests. This did not include the answer sheet because they did not know what the test would be like. Even the printing of the tests was a problem. "One printer couldn't handle the volume. . .It was unbelievable."

Educators' Reaction to the Eligibility Criteria and the LAB

Every educator involved in the bilingual education controversy who has been interviewed for this study or who has discussed the issue in conferences I have attended, with the exception of those working for the division responsible for developing the LAB, has expressed negative views on both the test itself and the criteria for determining eligibility.

"The test is terrible," said Dr. Roger Shuy, a linguist from the Center for Applied Linguistics, who had been consulted by the Board of Education. He said that the Board never defined "effective participation

in the classroom;" that the items measured by the test are superficial and that the administrator responsible for the test was not interested in its validity or reliability. In Shuy's view, bilingual education in New York City is "doomed because it will be shown to be ineffective." (Shuy, 1976)

The reasons supporting this statement go beyond the Board of Education's language assessment tests, however, to the evaluation of bilingual programs generally. Evaluators have not found which critical units to measure and there is no agreement among experts on these factors.

Several ESL and bilingual education classroom teachers who attended a bilingual education conference at Queens College in 1976 discussed some of the problems they had encountered with the test. They claimed that: some students designated as eligible for the bilingual programs were in fact (in terms of observed classroom performance) more proficient in English than in Spanish; the "Aspira classes" were being used as a "dumping ground" for "problem" students and that there was no bilingual teacher in their schools to administer the Spanish version of the test.

Two principals, both active supporters of bilingual education, also expressed negative views about the LAB.

"The test is a farce," said one. "It's not valid. Teachers say it's meaningless, but it's the only thing they can use."

From information about problems related to scoring the tests, provided by the second principal who was interviewed in the middle of November 1976 (more than a month after the Board had been cited for contempt), it was evident that the Board had not yet devised an efficient system to handle the answer sheets. Principals were required to return the answer sheets to the Board by September 30 but as late as November 9, the results had not been returned from the Board.

"How can the principals comply if they don't know which students are eligible?" this principal asked. The only way a principal could by-pass the problem was to handscore the answer sheet but this was "illegal" so he could understand a principal's not wanting to resort to this procedure.

The Number of Teachers Hired. "If the consent decree was effective at all," said one Aspira lawyer, "it was in keeping positions open to bilingual teachers who would have lost jobs because of low seniority." (Teitelbaum, 1976)

The data indicate that the decree not only increased Puerto Rican access to teaching positions in the shool system but was responsible for the maintenance of hundreds of Puerto Rican teachers who were already employed by the system before the decree was implemented when teachers from other groups were being laid off.

As the figures in Table 3 reveal, teachers with some form of bilingual license continued to be hired throughout the 1975-76 year. The Aspira Lawyers attributed this to the continued involvement of the court and especially the contempt proceedings.

Staff members of the PRLDEF and Aspira, at the time they were interviewed, did not have data on the number of Puerto Rican teachers hired by the Board of Education to implement the decree, but estimated that the figure was around 3,000. Respondents who were queried on this issue noted that the data available from the Board of Education listed Puerto Rican teachers under a "Spanish surname" category which would include all Spanish surnamed teachers whether or not they were bilingual.

TABLE 3

NUMBER OF SPANISH/ENGLISH BILINGUAL TEACHERS
HIRED BY NEW YORK CITY BOARD OF EDUCATION
SEPTEMBER 1975-SEPTEMBER 1976

Month	Type of License: Bilingual Common Brach	Bilingual Early Childhood
September, 1975	240	51
October	65	6
November	32	1
December	59	3
January, 1976	93	20
February	138	24
March	57	6
April	32	27
May	27	2
June	5	-
TOTAL	748	140

OTHER LICENSES	
Bilingual Ancillary Certificates	290
National Teacher Exam Appointments	205[a]
Recertified[c]	198[b]
Bilingual School & Community Relations	7
TOTAL	700
TOTAL HIRED ALL CATEGORIES:	1,588

[a] Sept./Oct. '75:N=96; Sept. '76:N=109

[b] Sept./Oct. '75:N=79; Sept. '76:N=119

[c] The recertified teachers were those with temporary licenses who would have been laid off if it were not for the consent decree.

SOURCE: New York City Board of Education
Division of Personnel

According to an attorney in the Board of Education's Division of Personnel, 2,300 licensed bilingual teachers had been hired between September 1975 and June 1976, but the list he provided added up to only 1,588, as indicated in Table 3.

The charge that the Board had hired unqualified personnel for the program was based on an "ancillary certificate." This certificate was granted to teachers who had a monolingual teaching license who passed a test to demonstrate proficiency in Spanish. The allegation was dismissed by a bilingual Puerto Rican principal who was on the Board of Examiners when the consent decree was implemented (and also a supporter of the court action). He estimated that possibly 1 percent of the ancillary certificates might have gone to teachers who were not proficient in Spanish. He also stated that most of the bilingual teachers hired were Puerto Rican.

A look at the number of teachers hired in February 1976 (N = 162) two months after the contempt action was taken and the month that pre-trial hearings on the case began, suggests that the intervention of the court did have a positive impact on this factor.

In April, 1975, an administrator in the Office of Bilingual Education stated that 1,500 bilingual teachers were already employed by the school system. If this was correct, then the 1,588 teachers hired between September 1975 and June 1976 would have brought the total to 3,088, a litle less than 500 from the estimated need of 3,500.

Possibly more important than the number of bilingual teachers hired to implement the consent decree, is the number of Puerto Rican teachers who were maintained despite the massive teacher lay-offs required by the budget cuts.

As shown in Table 4, between 1974-75 and 1975-76, the total number of teachers employed in the schools decreased by 7,368. There was a drop of only ten Spanish surnamed teachers between the two time periods contributing to a percent increase of teachers from this group from 3.1 percent to 3.6 percent. Comparable figures for blacks show a drop of 807 teachers and a drop in the percent of the total by 0.2 percentage points. Among white teachers ('other"), the change in absolute numbers--a decrease of 6,487 teachers--was more dramatic, but the percent decrease was relatively small--0.2 percent due to their larger share of the total to begin with.

Clearly the burden imposed by the lay-offs fell heaviest on white teachers and least on Spanish surnamed teachers. Despite the fact that the Spanish surname category includes non-Puerto Ricans, most observers agree that Puerto Ricans are the predominant group included in this category.

The Significance of the Aspira Decision. The Aspira decision was described by the lawyers as constituting "the most far-reaching court-ordered bilingual program since Lau." (Teitelbaum and Hiller, 1976)

The decree includes a number of positive elements--the development of English language skills, the reinforcement of skills in Spanish, and materials that reflect the child's culture, but "it does not reach all Hispanic students with rights under Lau." (Teitelbaum and Hiller, 1976) Beyond this, the decision does not include a bicultural component nor is it designed to promote language mantenance, standards to which most bilingual educators adhere. It is, the litigators admit, "not an educator's document." If the community relies on litigation to effect change in school systems, advises Hiller, "it will be transitional programs." (Hiller, October 1976)

TABLE 4

Profile: New York City Schools

Full-Time Teachers (Excluding District 75)*

	Total	Black		Spanish Surnamed		Oriental		Native American		Total Minority		Other	
1968-69**	51,832	4,079	7.9%	464	0.9%	137	0.3%	46	0.1%	4,726	9.1%	47,106	90.9%
1970-71	58,827	4,455	7.5%	798	1.4%	209	0.4%	10	0.0%	5,472	9.3%	53,355	90.7%
1971-72	54,889	4,426	8.1%	1,027	1.9%	214	0.4%	13	0.0%	5,680	10.3%	49,209	89.7%
1972-73	53,924	4,610	8.5%	1,154	2.1%	217	0.4%	12	0.0%	5,993	11.1%	47,531	88.9%
1973-74	54,726	4,746	8.7%	1,376	2.5%	288	0.5%	8	0.0%	6,418	11.7%	48,308	88.3%
1974-75	53,907	5,038	9.3%	1,688	3.1%	295	0.5%	10	0.0%	7,031	13.0%	46,876	87.0%
1975-76	46,539	4,231	9.1%	1,678	3.6%	233	0.5%	8	0.0%	6,150	13.2%	40,389	86.8%

Students (Excluding District 75)

	Total	Black		Spanish Surnamed		Oriental		Native American		Total Minority		Other	
1968-69**	1,063,587	334,641	31.5%	244,302	23.0%	15,753	1.5%	1,526	0.1%	596,222	56.1%	467,365	43.9%
1970-71**	1,140,359	393,516	34.5%	292,664	25.7%	17,115	1.5%	607	0.1%	703,902	61.7%	436,457	38.3%
1971-72	1,137,707	397,287	34.9%	301,380	26.5%	18,267	1.6%	308	0.0%	717,242	63.0%	420,465	37.0%
1972-73	1,113,601	399,804	35.9%	293,745	26.4%	20,146	1.8%	415	0.0%	714,110	64.1%	399,491	35.9%
1973-74	1,096,702	400,010	36.5%	296,389	27.0%	22,021	2.0%	613	0.1%	719,233	65.6%	377,469	34.4%
1974-75	1,094,609	398,572	36.4%	302,552	27.6%	23,088	2.1%	585	0.1%	724,797	66.2%	369,812	33.8%
1975-76	1,085,550	401,652	37.0%	308,551	28.4%	24,231	2.2%	727	0.1%	735,161	67.7%	350,389	32.3%

* All data from BEDS School Survey unless otherwise noted.

** Data from OCR Survey (101-102's)

SOURCE: U.S. Department of Health, Education, and Welfare, Office for Civil Rights. Letter to Chancellor Irving Anker from Martin H. Gerry, 9 November 1976, Appendix A.

In terms of New York City educational politics, the decision represents the first time that the City school system has been forced through court intervention to design and implement a specific educational program for a minority group. Furthermore, the contempt hearings provide a public record of the methods practiced by school administrators, making them visible, also a first, to outside observers.

CONCLUSIONS

A review of secondary data on the political development of the Puerto Ricans in New York City indicated that at the time the Bilingual Education Act was passed the group had not achieved political representation proportionate to its size of the City's population. This was reflected in the group's inability to promote its educational interests through the school system.

This inability is interpreted here as a reflection of changes in decision-making which have affected neighborhood institutions, making it difficult for new groups to use the traditional political process to promote and protect their interests. A major problem is that decisions affecting service delivery systems are usually made at levels beyond the community and frequently are controlled by professionals. Changes in the quality of services and minority access to jobs, therefore, requires decisions that weaken professional control.

These conditions which impede the upward mobility of new groups have given rise to federal programs which some social scientists perceive as mechanisms to create a functional alternative to the political machine (Katznelson, 1975). The Bilingual Education Act, and other legislation enacted under the War on Poverty, are examples of such programs.

The data we have reviewed on the Puerto Rican community in New York City suggest that the federal policies around bilingual education have provided resources to promote the educational and economic interests of this group in the

school system. However, this support is limited and the extent to which the policies can protect the interests of the group is questionable.

The Aspira consent decree created jobs in the school system, but it weakened the occupational group's control over policy implementation only in a limited way. This was due to the fact that implementation of the decree was turned over to the very administrators who had resisted the interests of the group in the first place. A primary limitation of litigation is that the court does not have the resources to monitor programs. Therefore it is virtually impossible to enforce compliance.

Secondly, the court has not, so far, dealt with issues related to the quality of educational programs. Although the Judge rejected the first test developed by the Board of Education, the second test--also criticized by many experts--continues to be used. No resources were provided to train teachers to administer the test or to develop pupil placement procedures. Since the decree does not require that any elements of the program be evaluated, there is no way to assess the quality of the program or the teachers implementing it.

The consent decree doubled the number of jobs available exclusively for Puerto Ricans, but there is a hitch. Because of the transitional nature of the program mandated by the court, the jobs may also be transitional. Maintenance of the jobs requires a stable stream of new migrants from Puerto Rico. Therefore, we can conclude that this policy cannot ensure these jobs for members of the group.

All of these factors, and others discussed elsewhere (Steinberg, 1978) incline us to question the effectiveness of litigation to protect either the educational or economic interests of minorities who have little influence at the local level. This does not mean to say that the strategy is ineffective--only that it cannot substitute for political influence where those responsible for implementing decisions are resistant to the new group's interests.

The events reported here indicate a need for more research on the effects of this lawsuit. Despite the general recognition of the increased role of the courts in local school policies and programs (Hogan, 1974), with the exception of school desegregation, there has been relatively little systematic research on this phenomenon. This is particularly true of decisions related to bilingual education. Fishman observed that these decisions have not been documented in terms of the social and political processes involved (1976), but the analysis of the effects or consequences of the decisions has been equally neglected. (Hall, 1974)

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